

Senate Bill 256
March 21, 2013
Presented by Ken McDonald
House Agriculture Committee

Mr. Chairman and committee members, I am Ken McDonald, Wildlife Division Administrator with Montana Fish, Wildlife and Parks (FWP). I am here on behalf of the Director in opposition to Senate Bill 256.

With SB 256, for the first time in Montana, and in a first for a particular species, FWP would be financially liable for any and all damage caused by a wild animal - wild bison. By extension, then, that financial burden will fall solely on sportsmen and women.

As you can see from the existing statute in the bill (subsection 7), the Department is already responsible for extensive planning related to any bison translocation, and is financially liable for damages if it does not follow that plan. But SB 256 takes the liability one step too far. It also includes financial liability for bison that leave Yellowstone Park, even if we are strictly following the current Interagency Bison Management Plan that allows for this limited tolerance of bison in Montana near Yellowstone.

The management actions in the IBMP are very specific. They require FWP and other agencies to respond to problems that may arise, and the agencies are committed to being responsive. In fact, FWP has a warden stationed in West Yellowstone and another in Gardiner to immediately address public safety and property concerns. Other agencies have immediate staff on the ground as well. FWP has also worked with nonprofit groups to establish a fund to reimburse landowners who wish to install fencing to keep bison from their property. Some of that fencing has already been installed in the Gardiner Basin, and funding remains to this day for interested landowners.

In other words, the collective liability for damages now held by the 5 IBMP agencies (3 federal and 2 state) would shift to just one state agency, FWP, and ultimately only to sportsmen. This is despite the fact that SB 212 from the 2011 legislative session made it very clear that the new planning provisions did not apply to Yellowstone bison, but only to bison that may be transplanted elsewhere in Montana.

Additionally, under SB 256, state liability would be extended to cover the costs of sheriff's offices or others who help to ensure public safety related to moving bison from roads and other measures. Currently, FWP law enforcement works cooperatively with other law officers to provide support for emergency situations and mutual enforcement responsibilities. SB 256 seems to formally eliminate such cooperation when it comes to public safety and bison. It encourages inefficiency, and is contrary to the commitment for mutual aid among law enforcement agencies.

The bill's original fiscal note reads zero, but that is because we initially interpreted the bill as applying only to transplanted bison over which we would have some control. We didn't initially catch that the bill also applies to wild bison that are allowed to exit YNP. However, upon further

review, it became clear that the bill does apply to those bison, meaning functionally that FWP would be liable for any damages done by wild bison, even from those populations over which we have little to no control. Per Technical Note 1 in the fiscal note, if there were claims required to be paid by FWP, and the claims were required to be paid from hunting and fishing license revenues, this would constitute a diversion and render FWP ineligible for further participation in the Wildlife and Sport Fish Restoration program. Until resolution of the diversion occurred, FWP would experience a loss of federal revenue of nearly \$19 million per year as well as associated expenditure reductions.

Living with wildlife in Montana has always involved making accommodations in lifestyle and property management. In return, we all enjoy the benefits of wildlife on the landscape. Many are intangible, but some are quite tangible, like monetary returns from landowner outfitting and tourism. We fence our gardens and yards to prevent damage from deer, we do the same with our stackyards for elk, and we take precautions to ensure our families and pets are not at risk from large carnivores. It's part of living in this great state. Living with bison on the landscape should not be singled out as something different that requires compensation for occasional damage. By way of example, the residents of Gardiner, MT have coexisted well with bison for decades, with many animals in town each year.

The Montana Supreme Court has addressed this issue in its Rathbone decision, stating, in part, that "One who acquires property in Montana does so with notice and knowledge of the presence of wild game." The court continues, "Wild game...cannot like domestic animals be controlled through an owner. Accordingly, a property owner in this state must recognize the fact that there may be some injury to property or inconvenience from wild game for which there is no recourse."

For these reasons, the Department opposes SB 256 and respectfully requests a "do not pass." Thank you for the opportunity to testify.



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Senator John Brenden
Senate Fish and Game Committee Chairman
Capitol Station
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Representative Jeffrey Welborn
House Fish, Wildlife & Parks Committee Chairman
Capitol Station
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Dear Senator Brenden and Representative Welborn:

Thank you for your recent letter inquiring about Montana Fish, Wildlife and Parks' (FWP) direction for bison management in Montana. As you know, this is an issue that generates significant public interest from a diverse set of parties in the state. This interest and passion has yielded no small amount of speculation, rumor, and misinformation about bison management. I appreciate the opportunity to clear up some of the confusion.

These issues are functionally divided into three separate categories – those associated with Yellowstone Park in the Greater Yellowstone area (GYA), those associated on non-tribal lands outside of the GYA, and those associated with tribal lands. I offer the following responses to the issues you have raised, as they pertain to each of these three situations.

Greater Yellowstone Area

The bison that migrate into Montana from Yellowstone National Park (YNP) are managed under the Interagency Bison Management Plan (IBMP). The IBMP was the product of ten years of planning among five state and federal agencies that ultimately resulted in a court-ordered mediation, where the final management agreement was struck. It is designed as an adaptive plan that adjusts to changing conditions over time. Under adaptive management, the IBMP partners are considering year-round tolerance for bison in a limited area on the west side of YNP. This area consists of the Hebgen Basin, the Cabin Creek Recreation and Wildlife Management Unit, the Monument Mountain Unit of the Lee Metcalf Wilderness Area, and the uppermost reaches of the Gallatin River. The northern extent of this area includes the Taylor Fork drainage, but it does not include areas northward into Big Sky or areas further north into the Gallatin Canyon. This proposal would also allow for year-round tolerance for bull bison only in the Gardiner basin. We offered a scoping notice for this proposal on July 23, 2012 and held public meetings in Gardiner and West Yellowstone. We hope to have a draft environmental assessment completed this spring.

Outside Yellowstone

On nontribal lands outside of the GYA, the department currently has no plans to move bison anywhere in the state of Montana. More specifically, the department has no plans to move bison to any of our

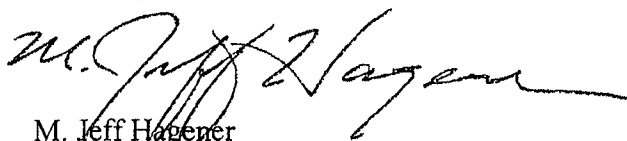
Wildlife Management Areas, including the Spotted Dog, Marias River, and Milk River properties. Furthermore, in the event bison movement is contemplated in the future, the department will fully comply with the provisions of SB 212, passed in 2011 and now codified within § 87-1-216, MCA. FWP has initiated a planning process to explore the potential for bison to be moved to appropriate areas and managed as wildlife in Montana. While not required under SB 212, FWP believes it is an important step to first take a statewide look at bison management in Montana. The planning process began with eight public scoping meetings during 2012, and generated more than 20,000 comments, which are currently being summarized and analyzed. If the decision is made to proceed with more site-specific analysis, FWP would convene a local working group in any area under consideration, in order to assist FWP with analyzing issues and making recommendations. For any eventual decision to establish bison in an area of Montana outside the GYE (and outside of tribal lands), a management plan would be developed in compliance with SB 212 (MCA 87-1-216), MEPA, and other statutory requirements. Again, please be assured that there are currently no such plans, nor are there any pre-determined outcomes to the planning process.

Tribal Lands

Native American tribes on reservations in Montana and outside of Montana have expressed strong desire for Yellowstone bison to restore cultural and subsistence values. Any bison that might be moved to a tribal reservation would be certified disease-free by the state veterinarian and APHIS, and expectations for their management will be articulated in an MOU with the Tribe(s) similar to the MOU agreed upon with the Fort Peck Tribes. If bison were to go to an out-of-state reservation, they would have to meet the requirements of the receiving state. The FWP Commission would also have to approve any such translocation. Presently no plans are in place for moving bison to any tribal lands, other than the potential for moving one-half of the bison that were moved to Fort Peck to Fort Belknap. As you note in your letter, that is presently not possible due to a court injunction.

FWP has an obligation to manage all wildlife for the greatest benefit of all Montanans. Because of the substantial interest surrounding bison, we believe it is important to undertake an open and honest planning effort to determine the course of bison management. In answer to your question about what legislators can do to help facilitate forward movement, your assistance in dispelling rumors and misinformation regarding bison management would be very helpful. Collectively, we must work with all interests to address bison conservation, in order to ensure that we properly consider where, if anywhere, we can find acceptable places for wild bison.

Sincerely,



M. Jeff Hagener
Director